

**UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO**

**UNITED STATES OF AMERICA**

**v.**

**PUERTO RICO ELECTRIC POWER  
AUTHORITY,**

**Defendant**

**CR NO. 98-127 (SEC)**

**MOTION FOR  
TERMINATION OF PROBATION**

TO THE HONORABLE COURT:

COMES NOW, defendant Puerto Rico Electric Power Authority ("PREPA"), by and through undersigned counsel, and respectfully show and pray as follows:

1. On July 24, 2002, this Court entered an Amended Order of Probation in the above-captioned matter. Said Order extended PREPA's probation for a period of 18 months, commencing on the date that the Visible Emissions Compliance Auditor ("VECA") was selected and approved by the Court, and imposed certain new conditions of probation as agreed to and set forth in the "Settlement Agreement" between the United States of America and PREPA filed June 21, 2002 ("Settlement Agreement").

2. The Amended Order of Probation accepted the Settlement Agreement between the government and PREPA as resolving all pending violations of probation alleged by the government.

3. The Settlement Agreement provided that the VECA was to read for a minimum of 18 months and a maximum of 36 months. The VECA began taking Method 9 readings on May 5, 2003. November 5, 2004 marked 18 months since the first VECA readings were taken.

4. The Settlement Agreement also provided that PREPA was to burn fuel with a sulfur content of not greater than 0.50% at the Palo Seco and San Juan facilities for a period of not less than two years. That two-year period began March 14, 2003 and, therefore, is over on March 14, 2005.

5. On or about October 28, 2004, the government filed a motion to Modify and Extend PREPA's conditions of probation. On or about November 5, 2004, PREPA filed a response to that motion in which PREPA respectfully requested that this Court: (1) terminate the VECA Project; (2) remove PREPA from the supervision of the United States Probation Office; (3) recognize that PREPA has satisfied all outstanding conditions of probation other than the requirement that PREPA combust low-sulfur fuel at its Palo Seco and San Juan plants for a minimum of two years; (4) and retain jurisdiction over PREPA only until such time as PREPA certifies that it has combusted 0.50% sulfur fuel at its Palo Seco and San Juan plants for two years, i.e. through March 14, 2005.

6. On or about November 10, 2004, the Court issued "Minutes of Proceedings" with respect to a Status Conference held in Chambers on November 10, 2004 to hear the parties' respective positions regarding the government's motion to Modify and Extend PREPA's conditions of probation. According to the Minutes of Proceedings, at that conference the Court directed that the VECA cease to monitor the Palo Seco power plant, and the Court indicated that while it was not prepared to remove PREPA from the supervision of the United States Probation Office at that time, the goal was to terminate PREPA's probation as soon as it could responsibly

do so. The Court also required that EPA and EQB enter into a Memorandum of Understanding (“MOU”) embodying parameters of the Court’s directives for funding, installation and operation of the air monitoring stations.

7. On or about December 15, 2004, the Court entered an Order granting the government’s motion to Modify and Extend the conditions of PREPA’s probation. That Order directed PREPA to fund the purchase of eight (8) complete air monitoring stations and, in order to do so, provide to EQB funding in the amount of \$388,250.00 on or before January 21, 2005 to cover the capital cost of the five (5) stations that PREPA had not yet funded. The Court also directed PREPA to fund the operation of five (5) of the air monitoring stations for a term of not less than three (3) years.

8. In fulfillment of the Court’s December 15, 2004 Order, on or about January 20, 2005, PREPA tendered to EQB a check in the amount of \$388,250.00 to fund capital costs, and a second check in the amount of \$267,324 to fund the operation of five stations for a minimum of three years. However, EQB declined to accept the checks at that time. EQB explained to PREPA that EQB could not accept PREPA’s checks because an account had not yet been established and the MOU between EPA and EQB had not yet been finalized. PREPA retained the checks pending notification by EQB that EQB was reading to accept them.

9. PREPA and EQB maintained their lines of communication, and on February 28, 2005, PREPA once again tendered those checks to EQB (see Exhibit A) and EQB has apparently accepted and deposited them in an appropriate account.

10. As set forth in detail in the accompanying Memorandum in Support of Defendant’s Motion for Termination of Probation, since the time that this Court approved the Settlement Agreement on July 24, 2002, PREPA has satisfied its conditions of probation, the

only remaining outstanding condition being combustion of 0.50% sulfur fuel at Palo Seco and Costa Sur for two years, which condition will be satisfied on March 14, 2005.

**WHEREFORE**, PREPA respectfully requests that this Honorable Court enter an order terminating PREPA's probation by removing all conditions of probation pending receipt of certification by PREPA that PREPA has combusted 0.50% sulfur fuel at Palo Seco and Costa Sur for two years.

Respectfully submitted,  
DUANE MORRIS LLP

Dated: March 17, 2005

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17th day of March, 2005, a true and correct copy of the foregoing Motion of Defendant, Puerto Rico Electric Power Authority, for Termination of Probation was served via telefax and first class mail, postage prepaid, on counsel for the United States of America, addressed as follows:

Howard P. Stewart, Esquire  
Senior Litigation Counsel  
Environmental Crimes Section  
United States Department of Justice  
P.O. Box 23985  
Washington, DC 20026-3985

A courtesy copy for informational purposes was also forwarded via Federal Express to:

Mr. Victor M. Canino  
United States Probation Office  
United States District Court  
District of Puerto Rico  
143 Federal Building  
150 Chardón Avenue  
San Juan, PR 00918-1741

/s/ Marco A. Gonzales  
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